Supreme Court, U. S.
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No. 76-927

In the Supreme Court of the United States

OCTOBER TERM, 1976

HAROLD S. RIFKIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

DANIEL M. FRIEDMAN,
Acting Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The judgment of the Court of Claims in this case was entered on April 14, 1976, and a petition for rehearing was denied on June 25, 1976 (Pet. App. 114a). The 90 days provided by 28 U.S.C. 2101(c) within which to file a petition for a writ of certiorari expired on September 23, 1976. The petition was not filed until December 30, 1976, and it is out of time.[1]

The time limit imposed by 28 U.S.C. 2101(c) is jurisdictional. *Toledo Scale Co.* v. *Computing Scale Co.*, 261

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[1]Petitioner's application for an extension of time, filed November 5, 1976, was returned as untimely (Pet. App. 3a). Moreover, the maximum extension allowable under 28 U.S.C. 2101(c) is 60 days; even if petitioner had obtained such an extension, it would have expired on November 22, 1976, well before the petition was filed.

U.S. 399, 417-418. Accordingly, the petition should be denied.

Respectfully submitted.

DANIEL M. FRIEDMAN,
Acting Solicitor General.

JANUARY 1977.

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